

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition No.: 64-019-17-1-5-00247-18
Petitioner: Lyle Davis, Trustee of the Lyle Keith and Susan Ruth Davis Revocable Trust
Respondent: Porter County Assessor
Parcel No.: 64-09-19-379-003.000-019
Assessment Year: 2017

The Indiana Board of Tax Review (“Board”) issues this determination in the above matter, finding and concluding as follows:

PROCEDURAL HISTORY

1. Lyle Davis, Trustee of the Lyle Keith and Susan Ruth Davis Revocable Trust, contested the 2017 assessment of property located at 482 Scarborough Road in Valparaiso by filing a Form 130 petition with the Porter County Assessor. The Porter County Property Tax Assessment Board of Appeals (“PTABOA”) failed to hold a hearing on the petition within 180 days and the Trustee opted to file a Form 131 petition with the Board.¹
2. The Trustee elected to proceed under the Board’s small claims procedures. On June 27, 2018, Ellen Yuhan, our designated administrative law judge (“ALJ”) held a hearing on the Trustee’s petition. Neither she nor the Board inspected the subject property.
3. The following people testified under oath: Lyle Davis, Trustee; Terri Newhard, Deputy Assessor; and Peggy Hendron, Deputy Assessor.
4. The Assessor valued the property as follows:

| Year | Land | Improvements | Total |
|-------------|-------------|---------------------|--------------|
| 2017 | \$82,700 | \$465,600 | \$548,300 |

RECORD

5. The official record for this matter contains the following:

¹ See I.C. § 6-1.1-15-1.2(d) and (k) (requiring a PTABOA to hold a hearing within 180 days of a taxpayer filing a notice of appeal, and giving the taxpayer the option to file an appeal with the Board if the PTABOA fails to issue a determination within those 180 days).

- a.
 - Petitioner Exhibit 1: Form 131 petition
 - Petitioner Exhibit 2: January 1, 2017 assessment showing a 14.3% increase over prior year
 - Petitioner Exhibit 3: List of comparable properties and selection criteria
 - Petitioner Exhibit 4: Valuation based on sales of comparable properties
 - Petitioner Exhibit 5: Adjustments used in the valuation based on sales of comparable properties
 - Petitioner Exhibit 6: List of additional properties
 - Petitioner Exhibit 7: Valuation based on comparison of assessment versus sales price of comparable and additional properties
 - Petitioner Exhibit 8: Multiple Listing Service (“MLS”) sheet for subject property
 - Petitioner Exhibit 9: Excerpt of property record card (“PRC”) for the subject property
 - Petitioner Exhibit 10: MLS sheet for comparable property A
 - Petitioner Exhibit 11: Excerpt of PRC for comparable property A
 - Petitioner Exhibit 12: MLS sheet for comparable property B
 - Petitioner Exhibit 13: Excerpt of PRC for comparable property B
 - Petitioner Exhibit 14: MLS sheet for comparable property C
 - Petitioner Exhibit 15: Excerpt of PRC for comparable property C
 - Petitioner Exhibit 16: MLS sheet for comparable property D
 - Petitioner Exhibit 17: Excerpt of PRC for comparable property D
 - Petitioner Exhibit 18: Excerpt of PRC for additional property 1
 - Petitioner Exhibit 19: Excerpt of PRC for additional property 2
 - Petitioner Exhibit 20: Excerpt of PRC for additional property 3

- b.
 - Respondent Exhibit 1: PRC and aerial view for the subject property
 - Respondent Exhibit 2: Narrative for subject appeal
 - Respondent Exhibit 3: Spreadsheet of comparable properties
 - Respondent Exhibit 4: Comparable breakdown with price per square foot
 - Respondent Exhibit 5: PRC and aerial view for 423 Wessex Road
 - Respondent Exhibit 6: PRC and aerial view for 479 Scarborough Road
 - Respondent Exhibit 7: PRC and aerial view for 370 Wilshire Court
 - Respondent Exhibit 8: PRC and aerial view for 209 Fox Chapel Court
 - Respondent Exhibit 9: PRC and aerial view for 462 Scarborough Road
 - Respondent Exhibit 10: PRC and aerial view for 465 Wexford Road
 - Respondent Exhibit 11: PRC and aerial view for 374 Devon Road

- c. The record also includes the following: (1) all pleadings, briefs, motions, and documents filed in this appeal; (2) all notices and orders issued by the Board or our ALJ; (3) a digital recording of the hearing; and (4) these Findings and Conclusions.

BURDEN OF PROOF

6. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances—where the assessment under appeal represents an increase of more than 5% over the prior year's assessment, or where it is above the level determined in a taxpayer's successful appeal of the prior year's assessment. I.C. § 6-1.1-15-17.2(b), (d). If the assessor has the burden and fails to meet it, the assessment reverts to the previous year's level or to another amount shown by probative evidence. I.C. § 6-1.1-15-17.2(b).
7. The assessment increased by more than 5% from 2015 to 2016. Consequently, the Assessor has the burden of proof.

SUMMARY OF CONTENTIONS

8. The Assessor's case:
 - a. The subject is a lakefront property in the Shorewood Forest subdivision, which is a limited access neighborhood. The neighborhood has a pool, a clubhouse, and a beach. Having frontage on the lake is an important factor for people considering purchasing in the neighborhood. *Newhard testimony; Resp't Ex. 2.*
 - b. The Assessor used 12 sales from 2016 in his ratio study. He excluded five sales that are not comparable to the subject property because of age, grade or size. The Assessor relied on the following seven properties, which are all lakefront homes constructed within ten years of the subject:
 - Comparable No. 1 (423 Wessex Road) sold for \$377,000 (\$91.55/SF) in April 2016.
 - Comparable No. 2 (479 Scarborough Road) sold for \$499,500 (\$116.19/SF) in July 2016.
 - Comparable No. 3 (370 Wilshire Court) sold for \$490,000 (\$129.36/SF) in November 2016.
 - Comparable No. 4 (209 Fox Chapel Court) sold for \$514,900 (\$155.89/SF) in July 2016.
 - Comparable No. 5 (462 Scarborough Road) sold for \$455,000 (\$120.21/SF) in August 2016.
 - Comparable No. 6 (465 Wexford Road) sold for \$410,000 (\$140.85/SF) in June 2016.
 - Comparable No. 7 (374 Devon Road) sold for \$560,000 (\$124.32/SF) in August 2016.

Newhard testimony; Resp't Exs. 2-11.

- c. The Assessor determined that differences between single story and two story homes, and masonry versus prefabricated fireplaces required no adjustments. He did consider making adjustments for differences in lot size, lake frontage, grade, size, basement, basement finish, bathroom count, additional fixtures or specialty plumbing, exterior features, garage size, and number of fireplaces. The Assessor ultimately rated Comparable No. 2 as slightly superior, with the remaining six sales rated as slightly inferior to the subject property. *Newhard testimony; Resp't Exs. 2-4.*
- d. The median sale price of the Assessor's comparable sales is \$129.36/SF and the mean price is \$130.39/SF. The Trustee's property is low at \$123.83/SF. *Newhard testimony; Resp't Ex. 4.*
- e. The Assessor criticized the Trustee's use of sales data from 2017, claiming that only 2016 sales were eligible for use in the ratio study. If the 2017 sales are eligible, the Assessor could use them in the 2018 ratio study. *Newhard testimony; Hendron testimony.*

9. The Trustee's case:

- a. The Trustee contends the property is over-assessed in relation to sales of comparable lakefront properties in the Shorewood Forest subdivision. He relied on the following four properties, which all have lots between 0.25 and 0.5 acres and sold within three months of the January 1, 2017 valuation date:
 - Comparable A (208 Scarborough Court) sold for \$438,000 in March 2017. The Trustee described it as the most comparable sale. It is eight doors from the subject property and both properties are approximately the same age, in average condition, have similar room counts and square footage, and both have two-car garages, one fireplace and no pool. The "Residential Agent Detail Report" lists certain personal property items as negotiable. Its adjusted sale price was \$416,700.
 - Comparable B (370 Wilshire Court) sold for \$490,000 in October 2016. It is two years newer with a larger lot, more square footage, two fireplaces, central vacuum, a sprinkler system, and bamboo flooring. Its adjusted sale price was \$420,000.
 - Comparable C (197 Amherst Court) sold for \$530,000 in March 2017. It is 11 years newer and much larger than the subject property at approximately 6,300 square feet. It also has a three-car garage and an indoor pool. The "Residential Agent Detail Report" lists updates completed in 2015, including a new roof, new gas lines in pool equipment room, pool room furnace, pool heater, retractable pool cover, humidity exhaust system, water heater and solarium reseal. It also indicates that the sale includes two additional parcels of land containing 0.25 and 0.29 acres, respectively. Its adjusted sale price was \$421,700.

- Comparable D (437 Wessex Road) sold for \$510,000 in October 2016. It is two years newer and is in excellent condition. The home is about the same size as the subject property, but it has a larger lot, four fireplaces and amenities such as central vacuum, a boat garage and a sauna that the subject does not have. Its adjusted sale price was \$423,200.

L. Davis testimony; Pet'r Exs. 3, 4, 8-17.

- b. The Trustee relied on an old appraisal and online research to arrive at reasonable adjustments. He made age adjustments at \$1,500/year. For his land adjustment, the Trustee took the assessed values from property cards and calculated an average cost per acre. For condition, he made no adjustments for homes rated as average, \$10,000 adjustments for homes in good condition, and \$20,000 for homes in excellent condition. For size differences, the Trustee made adjustments of \$35/SF for above-grade areas and \$28/SF for below-grade areas. He also made adjustments of \$2,500 for each bedroom; \$1,000 per half bath; \$5,000 per car space in garages; \$10,000 per fireplace and pool; \$2,000 for sprinkler systems; \$3,000 for saunas, central vacuum, and bamboo flooring; and \$5,000 per boat garage. *L. Davis testimony; Pet'r Exs. 3-5.*
- c. In addition to the four comparable sales, the Trustee submitted information on the following three sales located in the Shorewood Forest subdivision that he excluded from his sales comparison grid:
 - Additional Property 1 (416 Wessex Road) sold for \$545,000 in September 2016. The Trustee inadvertently excluded it from his sales-comparison grid because he thought its sale date was in July 2017.
 - Additional Property 2 (446 Wessex Road) sold for \$550,000 in December 2016. The Trustee excluded it due to its large lot size.
 - Additional Property 3 (473 Roxbury Road) sold for \$490,000 in May 2017. The Trustee excluded it due to its large lot size.

L. Davis testimony; Pet'r Exs. 6, 7, 18-20.

- d. Although the Trustee developed a sales comparison approach, he did not use it to compute a suggested valuation. Instead, he claimed that the assessed values of all seven of the properties he researched are excessive when compared to their respective sale prices. Based on his calculations, these seven properties are over-assessed on average by 28.8%. Applying that percentage to the subject property's 2017 assessment results in a value of \$425,700. *L. Davis testimony; Pet'r Exs. 6, 7.*
- e. The Trustee understands the Assessor's parameters for ratio studies. However, he argued sales should be as close to the assessment date as possible. A sale should not be excluded if it sold soon after the date of assessment. For example, if a property is

worth a certain price on January 2, it was probably worth the same amount on January 1. *L. Davis testimony.*

ANALYSIS

10. The Assessor failed to make a prima facie case supporting the subject property's 2017 assessment, and the Trustee failed to make a prima facie case for a reduction below its 2016 assessed value. Accordingly, we order the subject property's 2017 assessment reduced to its 2016 assessed value of \$479,700. The Board reached this decision for the following reasons:
 - a. The goal of Indiana's real property assessment system is to arrive at an assessment reflecting the property's true tax value. 50 IAC 2.4-1-1(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 3. "True tax value" does not mean "fair market value" or "the value of the property to the user." I.C. § 6-1.1-31-6(c), (e). It is instead determined under the rules of the Department of Local Government Finance ("DLGF"). I.C. § 6-1.1-31-5(a); I.C. § 6-1.1-31-6(f). The DLGF defines "true tax value" as "market value in use," which it in turn defines as "[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." MANUAL at 2.
 - b. All three standard appraisal approaches—the cost, sales-comparison, and income approaches—are appropriate for determining true tax value. MANUAL at 2. In an assessment appeal, parties may offer any evidence relevant to a property's true tax value, including appraisals prepared in accordance with generally recognized appraisal standards. *Id.* at 3; *see also Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) (reiterating that a market value-in-use appraisal that complies with the Uniform Standards of Professional Appraisal Practice ("USPAP") is the most effective method for rebutting the presumption that an assessment is correct). Regardless of the method used, a party must explain how their evidence relates to the relevant valuation date. *Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Otherwise, the evidence lacks probative value. *Id.* The valuation date for a 2017 assessment was January 1, 2017. I.C. § 6-1.1-4-4.5(f).
 - c. As discussed above, the Assessor had the burden of proving that the subject property's 2017 assessment is correct. The Assessor offered evidence regarding the sales of seven purportedly comparable properties. In doing so, the Assessor essentially relied on a sales comparison approach. The sales comparison approach "estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market." MANUAL at 2.
 - d. To effectively use the sales comparison approach as evidence in a property tax appeal, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is "similar" or "comparable" do not suffice. Instead, the proponent must explain how the properties compare to each

other in terms of characteristics that affect market value-in-use. *Long*, 821 N.E.2d at 471. The proponent must similarly explain how relevant differences affect their values. *Id.*

- e. Here, the Assessor did little to show that his seven purportedly comparable sales are comparable to the subject property, other than to state they are all lakefront homes. Although their location on the lake is certainly an important factor, the Assessor's secondary reason, that they were constructed within ten years of the subject, does not demonstrate comparability. That is particularly true because the Assessor did not explain why his sales comparison grid lists multiple year built dates for two of the seven sales, which leaves us questioning whether they underwent renovations or other changes that might affect their comparability.
- f. The Assessor's sales comparison grid and his accompanying "comparable breakdown" consider many other relevant characteristics. But in discussing their comparability to the subject, the Assessor simply listed the characteristics he found to be similar without explanation. While making a comparison of the number of bedrooms or bathrooms may not require any additional explanation, characteristics such as grade do. Thus, we conclude that the Assessor failed to provide sufficient information to demonstrate comparability.
- g. Even if we accepted the Assessor's seven sales as sufficiently comparable, his adjustment process failed to establish how the differences between the subject property and his sales affect their relative market values-in-use. The Assessor noted differences between the properties and rated them as either inferior or superior to the subject property, but he failed to explain any of the reasoning supporting those opinions. Again, some of the differences are apparent and require little justification, but others like construction quality need a detailed explanation to be reliable.
- h. The Assessor also failed to explain how he reconciled his qualitative adjustments. It appears he may have simply offset superior and inferior adjustments, as he provided no indication of the importance placed on any specific item of comparison. That matters because different characteristics generally have different effects on value. Furthermore, appraisers typically resort to a qualitative analysis only for differences between the subject and comparable properties for which they cannot quantify the effect on value. In this case, however, there is no indication that the Assessor even contemplated performing a quantitative analysis.
- i. Additionally, the Assessor did not use his sales comparison approach to produce a suggested value. Instead, he simply calculated a median and mean price per square foot from the unadjusted prices of his seven sales. The Assessor claimed that the average he computed supports the subject property's current assessment because it is higher than that assessment despite the fact that all but one of his sales are slightly inferior to the subject property. While the Assessor's sales did produce a higher

average price per square foot than the subject's current assessment, he failed to demonstrate that this method conforms to generally accepted appraisal principles.

- j. Given the significant problems discussed above, the Assessor's sales comparison approach is insufficiently reliable to be probative evidence of the subject property's market value-in-use. Because the Assessor did not offer any other probative valuation evidence, he failed to make a prima facie case that the subject property's current assessment is correct. The Trustee is therefore entitled to have his 2017 assessment reduced to its 2016 value of \$479,700.
- k. That does not end our review, however, because the Trustee sought a lower valuation. To successfully make a case for a lower assessment, a taxpayer must use market-based evidence to "demonstrate that their suggested value accurately reflects the property's true market value-in-use." *Eckerling*, 841 N.E.2d at 678.
- l. The Trustee submitted a sales comparison approach relying on four purportedly comparable sales. Again, in order to rely on such evidence in an assessment appeal, a party must first show that the properties are comparable to the subject property. Here, with the exception of Comp A, the Trustee did little to relate any of the properties' specific features and characteristics to the subject property. Indeed, the Trustee's testimony mainly highlighted their differences. He also failed to offer any supporting evidence, such as sales disclosure forms, to verify that the sale prices only reflected the value of the real property. This omission is particularly concerning because the sale of Comp A may have included the value of certain personal property items and the sale of Comp C appears to have included two additional parcels of land.
- m. Further, while the Trustee attempted to explain how relevant differences affected the values of his comparable sales, he failed to support any of his adjustments with market-based evidence. The Trustee developed his adjustments by reviewing an old appraisal and conducting some online research, but this is insufficient to demonstrate that his adjustments bear any relationship to the market. And he admittedly calculated his land adjustments using assessed values gleaned from property record cards instead of actual land sales.
- n. Because the Trustee failed to establish that his purportedly comparable properties were actually comparable to the subject property and failed to support his adjustments with market-based evidence, his sales comparison approach lacks probative value. Moreover, the Trustee did not use his sales comparison approach to compute a suggested value. Instead, the Trustee inexplicably abandoned the approach and argued that we should reduce his assessment by 28.8% because the seven properties he examined sold, on average, for prices 28.8% below their assessed values. Based on his calculation, the Trustee claimed the subject property's assessment should be \$425,700.

- o. The Trustee failed to cite to authority, but he appears to have shifted his focus into challenging his assessment under the “uniform and equal” mandate contained in Article 10, Section 1(a) of Indiana’s Constitution. According to the Tax Court, “when a taxpayer challenges the uniformity and equality of his or her assessment one approach that he or she may adopt involves the presentation of assessment ratio studies, which compare the assessed values of properties within an assessing jurisdiction with objectively verifiable data, such as sales prices or market value-in-use appraisals.” *Westfield Golf Practice Ctr., LLC v. Wash. Twp. Assessor*, 859 N.E.2d 396, 399 n.3 (Ind. Tax Ct. 2007). Such studies, however, must be prepared according to professionally acceptable standards. *Kemp v. State Bd. of Tax Comm’rs*, 726 N.E.2d 395, 404 (Ind. Tax Ct. 2000). They should also be based on a statistically reliable sample of properties that actually sold. *Bishop v. State Bd. of Tax Comm’rs*, 743 N.E.2d 810, 813 (Ind. Tax Ct. 2001) (citing *Southern Bell Tel. and Tel. Co. v. Markham*, 632 So.2d 272, 276 (Fla. Dist. Co. App. 1994)).
- p. When a ratio study shows that a given property is assessed above the common level of assessment, that property’s owner may be entitled to an equalization adjustment. *See Dep’t of Local Gov’t Fin. v. Commonwealth Edison Co.*, 820 N.E.2d 1222, 1227 (Ind. 2005) (holding that taxpayer was entitled to seek an adjustment on grounds that its property taxes were higher than they would have been if other property in Lake County had been properly assessed). The equalization process adjusts the property assessments so “they bear the same relationship of assessed value to market value as other properties within that jurisdiction.” *Thorsness v. Porter County Ass’r*, 3 N.E.3d 49, 51 (Ind. Tax Ct. 2014) (citing *GTE N. Inc. v. State Bd. of Tax Comm’rs*, 634 N.E.2d 882, 886 (Ind. Tax Ct. 1994)). Article 10, Section 1(a) of Indiana’s Constitution, however, does not guarantee “absolute and precise exactitude as to the uniformity and equality of each individual assessment.” *State Bd. of Tax Comm’rs v. Town of St. John*, 702 N.E.2d 1034, 1040 (Ind. 1998).
- q. Here, the Trustee failed to offer sufficient evidence to support his requested equalization adjustment. Although the Trustee compared the assessed values of his seven properties with their actual sale prices, a party offering assessment data must also show the properties are comparable using generally accepted appraisal and assessment practices. I.C. § 6-1.1-15- 18(c); *see also Indianapolis Racquet Club, Inc. v. Marion Co. Ass’r*, 15 N.E.3d 150 (Ind. Tax Ct. 2014).
- r. For the reasons discussed above, the Trustee failed to establish the comparability of the four sales he used in his sales comparison approach. Furthermore, Comp C appears to have included two additional parcels of land and the Trustee did not include their assessed values when calculating its assessment to sale price ratio. And he offered no testimony demonstrating comparability between the subject and his three additional sales. In fact, he specifically excluded two of them from his sales comparison analysis due to concerns regarding their comparability. He also failed to explain how a sample size of seven is sufficient to draw any meaningful inference

about the uniformity and equality of assessments within the subject property's assessing jurisdiction. The Trustee's evidence therefore lacks probative value.

- s. Because the Trustee offered no probative market-based evidence to demonstrate the subject property's correct market value-in-use, he failed to make a prima facie case for a further reduction.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, we order the Trustee's 2017 assessment reduced to \$479,700.

ISSUED: September 13, 2018

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. P.L. 219-2007 (SEA 287) is available on the Internet at <http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>.